

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

WINGATE INTERNATIONAL, INC.,

Plaintiff,

v.

**INN AT MISSOURI RESEARCH PARK,
LLP, et al.,**

Defendants.

Civil Action No. 13-1638 (CCC)

ORDER

THIS MATTER is before the Court upon the motion of Plaintiff for the entry of default judgment. [CM/ECF No. 11.] The motion is **denied without prejudice**.

Plaintiff commenced this action on March 15, 2013. [CM/ECF No. 1.] Plaintiff served the Complaint on Defendants on May 6, 2013. [CM/ECF No. 5.] The time for Defendants to answer or otherwise move in response to the Complaint expired. *See* Fed. R. Civ. P. 12(a). Defendants failed to answer or otherwise respond to the Complaint. Pursuant to Federal Rule of Civil Procedure 55(a), the Clerk entered a Default against Defendants on August 27, 2013. [CM/ECF No. 7.] Plaintiff filed the instant motion for default judgment on November 8, 2013. On November 26, 2013, Mr. Harold Whitfield, representing himself to be Defendants' CEO, filed a letter stating that he is in Missouri and requesting additional time to "obtain local counsel and file a response to Plaintiff's Complaint." [CM/ECF No. 12.]

The motion for default judgment is **denied without prejudice**. Mr. Whitfield's letter suggests he would like to retain counsel and defend the case. Given the leniency routinely afforded to *pro se* litigants, the Court believes that it is appropriate to provide Mr. Whitfield one final opportunity to retain counsel to represent the Defendant companies. The Third Circuit has a strong preference that matters be resolved on the merits whenever possible, *e.g., Emasco Ins. Co. v. Sambrick*, 834 F.2d 71, 74 (3d Cir.

1987), and the Court is satisfied that providing Mr. Whitfield with one final opportunity to proceed will not prejudice Plaintiff in this case.

Based on the above, Defendants shall have until **January 27, 2014**, to retain counsel and have a notice of appearance entered on the docket. Mr. Whitfield is hereby advised that because Defendants are all companies, they must retain counsel and he cannot defend the case on their behalf. *See, e.g., Rowland v. California Men's Colony*, 506 U.S. 194, 201-02 (1993); *Simbraw, Inc. v. United States*, 367 F.2d 373, 374 (3d Cir. 1966).

If Defendants fail to have counsel enter an appearance by **January 27, 2014**, Plaintiff may renew its motion for default judgment. Because of the procedural history stated herein, all parties are advised that no further extensions of deadlines will be permitted.

Plaintiff is directed to serve Mr. Whitfield with a copy of this Order by overnight mail within one business day of the date of this Order.

s/Mark Falk
MARK FALK
United States Magistrate Judge

DATED: December 27, 2013